

# SPECIAL NOTICE

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## “Prepared Food” Tax Changes

SB 6515 (Chapter 153, Laws of 2004)

**Retroactive to January 1, 2004**, the sales tax exemption for food products has been amended. The new law changes and clarifies the definition of “prepared foods,” primarily affecting food manufacturers who sell products at retail, delicatessens and similar businesses, and bakeries. The law’s special treatment of bakeries is discussed in a previously issued notice *Sales of Bakery Items*.

The tax applications for food manufacturers and delicatessens are discussed herein.

“Prepared foods” are subject to retail sales tax and include all products that meet **any** of the following criteria:

1. Food sold with eating utensils provided *by the seller*.
  - Utensils include plates, knives, forks, spoons, glasses, cups, napkins, or straws.
  - Utensils **do not** include containers or packaging used to carry the food.
2. Food and food ingredients sold in a heated state or heated *by the seller*.
  - Except bakery items.
3. Two or more food ingredients mixed or combined by the seller for sale as a single item;  
**Unless the product:**
  - Is only cut, repackaged, or pasteurized *by the seller*;
  - Contains raw eggs, fish, meat, poultry, and food containing these raw foods that require cooking by the consumer as recommended by the Food and Drug Administration (FDA) to prevent food borne illness;
4. However, prepared foods do **not** include food, if sold without eating utensils provided by the seller, that:
  - Is a bakery item;
  - **Is sold by weight or volume as a single item in an unheated state; or**
  - **Is sold by a food manufacturer (North American Industry Classification System (NAICS), Sector 311, except for bakeries—subsector 3118).**

## Determining When Tax Applies

The general intent of the law is to exempt most grocery store food items from retail sales tax while subjecting restaurant sales to tax. However, many businesses, including grocery stores, sell food products in the same manner as restaurants. Retail businesses should ask themselves the following questions in the following steps to help determine when a product is considered “prepared food” and subject to retail sales tax:

### ***Step 1. Am I selling the product with an eating utensil?***

If the answer is “yes,” the sale is subject to retail sales tax.

If the answer is “no,” and the product is a bakery item, the sale is exempt from retail sales tax.

If the answer is “no,” and the product is not a bakery item, move to Step 2.

### ***Step 2. Am I heating the product or selling it in a heated state?***

If the answer is “yes,” the sale is subject to retail sales tax.

If the answer is “no,” move to Step 3:

### ***Step 3. Did I mix or combine two or more ingredients to sell as a single item?***

If the answer is “no,” the sale is exempt from retail sales tax.

If the answer is “yes,” move to Step 4.

### ***Step 4. Ask yourself the following four questions:***

- 1. Did I only cut, repackaged, or pasteurized the product?***
- 2. Is the product sold by weight or volume as a single item?***
- 3. Am I a food manufacturer under NAICS, Sector 311, other than a bakery (subsector 3118)?***
- 4. Does the product contains raw eggs, fish, meat, or poultry, that requires cooking by the consumer as recommended by the FDA to prevent food borne illness?***

If the answer to ***any*** one of these four questions is “yes,” the sale is exempt from retail sales tax.

If the answer to ***all*** four of these questions is “no,” the sale is subject to retail sales tax.

Charges for combined sales of taxable (i.e. a latte) and nontaxable items (i.e. a box of a dozen donuts) must be properly segregated or the entire un-segregated charge is subject to retail sales tax.

**Food Sold at Locations with an Admission Charge** — Sales of otherwise tax-exempt foods, such as boxes of candy at movie theaters and fairs are no longer taxable.

## **Unchanged:**

**Nutrition Programs** — Meals sold under a state administered nutrition program for the aged and meals sold to senior citizens, disabled persons, and low-income persons by a nonprofit organization remain **tax-exempt**.

**Food Stamp Sales** — Eligible foods under the Food Stamp Act of 1977 purchased with food coupons, including otherwise taxable soft drinks, remain exempt from retail sales tax.

The Department of Revenue is in the process of Amending WAC 458-20-244. Persons selling food products should refer to this administrative rule.

## Definitions

**“Prepared foods”** include any products prepared by the retailer, such as unsealed beverages, including hot and iced coffee, tea, fountain drinks, and milk shakes. “Prepared foods” ***do not*** include sealed beverages, canned goods, and other food products boxed, bottled, or otherwise packaged and sealed by someone other than the retailer, unless the product is heated or sold with eating utensils.

**“Eating utensils”** include plates, knives, forks, spoons, glasses, cups, napkins, and straws. Eating utensils ***do not*** include bags, boxes, and other containers or packaging used to transport the food.

**“Sold with eating utensils provided by the seller.”** Food is considered to be sold with eating utensils provided by the seller when the seller physically includes the utensils with the food item. For example, the seller may serve the prepared food item on a plate or place napkins in a bag with the food item.

However, merely making utensils available for the customer to take at the customer’s discretion does not constitute “sold with eating utensils provided by the seller.” For example, food items are not “sold with eating utensils” when the seller has merely placed a napkin dispenser on the counter or has set up a utensil “island” for customers in the store.

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